

City Council Introduction: **Monday**, April 15, 2002
Public Hearing: **Monday**, April 22, 2002, at **1:30 p.m.**

Bill No. 02-51

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3360**, from R-4 Residential District to O-2 Suburban Office District, requested by Herb and Katie Reese, on property generally located at So. 49th Street and Lowell Avenue (4903 Lowell Avenue).

STAFF RECOMMENDATION: **Denial.**

ASSOCIATED REQUESTS: None

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/03/02
Administrative Action: 04/03/02

RECOMMENDATION: **Denial** (7-1: Newman, Duvall, Bills-Strand, Steward, Carlson, Krieser and Schwinn voting 'yes'; Larson voting 'no'; Taylor absent).

FINDINGS OF FACT:

1. The staff recommendation to **deny** this change of zone request is based upon the "Analysis" as set forth on p.3-4, concluding that the request is inconsistent with the Comprehensive Plan and would result in spot zoning. A change of zone on this property is not in the public's interest.
2. The applicant's testimony is found on p.5.
3. There was no testimony in opposition.
4. On April 3, 2002, the Planning Commission agreed with the staff recommendation and voted 7-1 to recommend denial (Commissioner Larson dissenting).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: April 8, 2002

REVIEWED BY: _____

DATE: April 8, 2002

REFERENCE NUMBER: FS\CC\2002\CZ.3360

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3360

DATE: March 18, 2002

PROPOSAL: Change of Zone from R-4 Residential to O-2 Suburban office at 4903 Lowell Ave.

LAND AREA: 7,100 square feet.

CONCLUSION: This request is inconsistent with the Comprehensive Plan and would result in spot zoning. A change of zone on this property is not in the public's interest.

RECOMMENDATION:

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 8, Block 41, College View, located in the SE 1/4 of Section 5-9-7, Lancaster County, Nebraska.

LOCATION: S. 49th St and Lowell Ave.

APPLICANT: Herb & Katie Reese
5417 South 62nd St.
Lincoln, NE 68516
(402) 421-7771

OWNER: Same

CONTACT: Same

EXISTING ZONING: R-4 Residential

EXISTING LAND USE: Single family house

SURROUNDING LAND USE AND ZONING:

North: R-4 Single family, parking lot and Church
South: R-4 Single family; one lot is R-5
East: R-4 Single family and duplexes.
West: Mixture of R-4,R-5,R-6,O-2 and B-3
R-4 is adjacent applicants property.
R-5 is southwest of applicants property.

R-6 is on three lots between S.48th and S. 49th Streets on the north side of Meredith St.
O-2 is on two lots between S.48th and S. 49th on the south side of Lowell Ave.
B-3 is located on the east and west sides of S. 48th St.

HISTORY:

SP #1742 Approved a parking lot in a residential zone in September 1998 on Lots 9,10 and 11, Block 30 College View Addition.

CZ #2702 Approved a change of zone in August 1992 from O-2 to B-3 for Lot 6, Block 40 College View Addition.

CZ #1844 Approved a change of zone from R-2 to O-2 in December 1980 on Lots 12 & 13, Block 45 College View Addition.

CZ #1730 Approved a change of zone from R-4 to O-2 in October 1979 on Lots 4,5 &6, Block 40 College View Addition. Prior to the adoption of the 1979 Zoning Ordinance, this property met the conditions for transitional lots. Transitional lots, outlined in the 1953 Zoning Ordinance, allowed office use. This property met the intent of the O-2 District.

CZ #1722 Approved a change of zone from R-4 to O-2 on Lot 10, Block 39, College View Addition. This lot met the criteria for transitional lots outlined in the 1953 Zoning Ordinance. This property met the intent of the O-2 District.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Map designates this lot as Urban residential.

TRAFFIC ANALYSIS: S. 49th Street and Lowell Avenue are local streets.

PUBLIC SERVICE: Fire Station No. 6, located at S. 48th St. and Highway 2, is the closest fire station to this property.

ALTERNATIVE USES: Other uses allowed in the R-4 District.

ANALYSIS:

1. This site is within the R-4 Residential District. The site does not abut any other districts other than residential districts.
2. The site is surrounded by single-family homes and duplexes, with a parking lot directly north of the site. A change of zone to O-2 is not compatible with the surrounding land uses.
3. This change of zone could be considered a spot zoning. A 1990 memo from the City Attorney's Office (see Attached) quotes from a Nebraska court case, Weber v. City of Grand Island. The case states that to be considered an invalid spot zoning the following criteria must be met:

1. a small parcel of land is singled out for special and privileged treatment;
2. the singling out is not in the public interest but only for the benefit of the landowner;
3. the action is not in accord with a comprehensive plan.

All three of the above factors are present with this change of zone.

4. The 1994 Comprehensive Plan identifies this parcel as urban residential.
5. The O-2 zoning district requires the following setbacks:

Front Yard: 30' or same as abutting residential district whichever is less. The R-4 district has a 25' front yard setback.
Side Yard: 10'
Rear Yard: 40'

The existing structure, does not meet the front yard setback for the O-2 District. The existing structure, built prior to 1979, is a Nonstandard Use.

6. Parking requirements in the O-2 District requires one space per 300 square feet of the building. Based on the size of the existing building, three off street parking spaces would be required.
7. The previous change of zones from residential to office, stated previously in this report, all abutted the B-3 Commercial District and would have qualified as Transitional Lot, prior to the 1979 zoning update.
8. Chapter 27.26 (O-2 District) of the LMC states, "This district is intended to provide a redeveloping area, primarily of office uses in those suburban areas previously zoned O-1 Office District and those fronting on the same street, with the same side lot lines and within 150 feet of the following districts: B-1, B-3, B-4, H-2, H-3, and I-1. This district is intended as a transition zone where it abuts the previously mentioned districts." This site does not meet the intent of the O-2 District.

Tom Cajka
Planner

CHANGE OF ZONE NO. 3360

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 3, 2002

Members present: Newman, Duvall, Bills-Strand, Steward, Carlson, Krieser, Larson and Schwinn; Taylor absent.

Staff recommendation: Denial.

Proponents

1. **Katie Reese**, 5417 So. 62nd, presented the application. She and her husband are requesting this change of zone to change the residential property to O-2. They intend to establish their business office at this location. She and her husband own Reese Construction, a residential remodeling business. She reviewed the surrounding zoning, e.g., there is O-2 and business zoning just to the west about 200', and right across the street to the north there is a parking lot for the 7th Day Adventists Church. Union College campus is just another 200' to the north. As far as the setbacks for O-2 zoning, the requirements fit except for the west side where the setback for the side should be 10'. They have 9'. Ms. Reese does not believe this change of zone would cause any disruption for the neighborhood or the area.

Steward inquired whether the Reese's live on this property. Ms. Reese stated that they do not live there. It is currently used as a rental property.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 3, 2002

Steward moved to deny, seconded by Carlson.

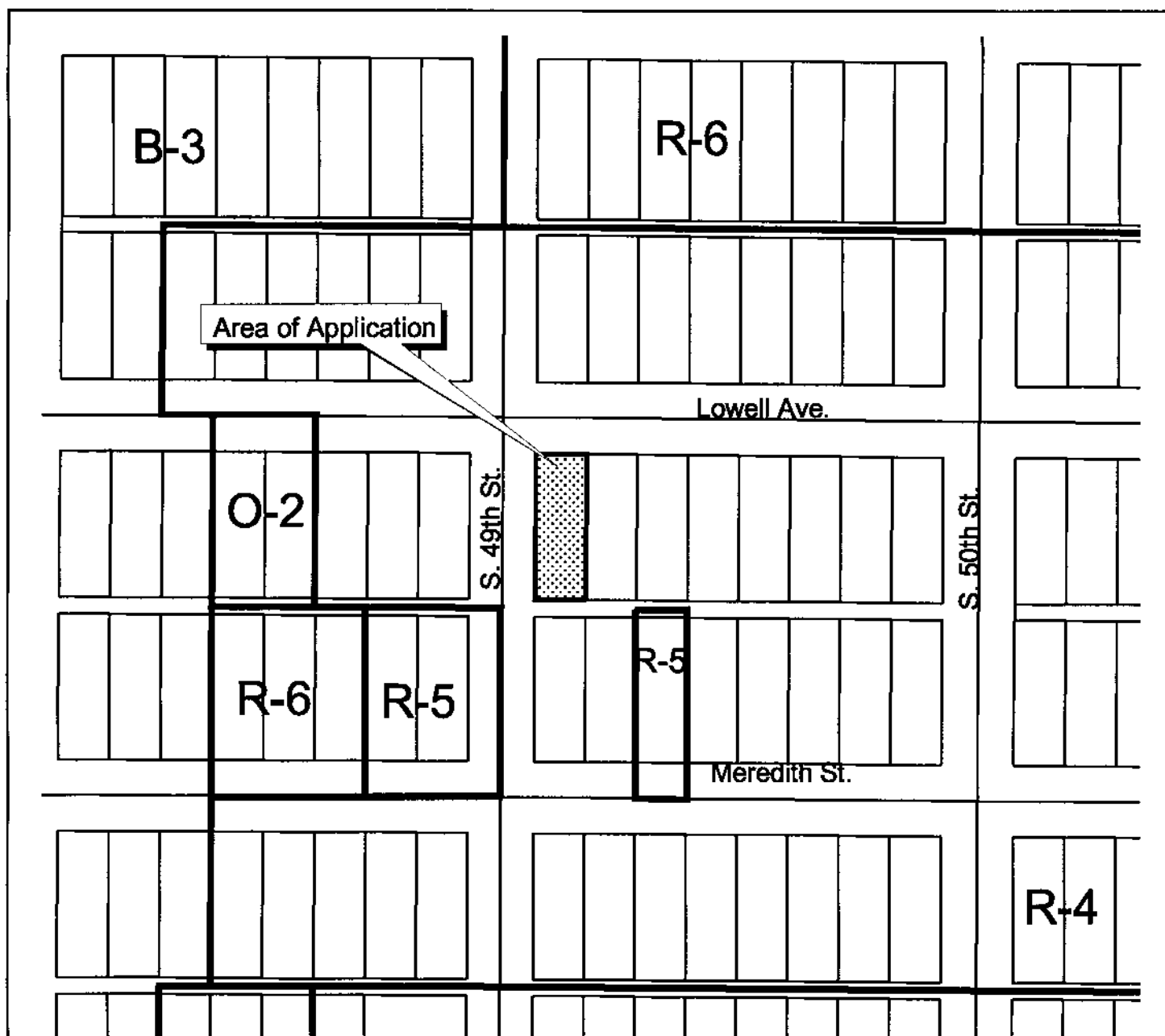
Steward believes the staff analysis is correct. Even though there is some other zoning in the general proximity, he believes this does fit the classic definition of spot zoning and it is further encroachment to the east into an otherwise apparently stable neighborhood. He does not believe we are so restricted in availability of office space in other parts of the city.

Motion to deny carried 7-1: Newman, Duvall, Bills-Strand, Steward, Carlson, Krieser and Schwinn voting 'yes'; Larson voting 'no'; Taylor absent.



**Change of Zone #3360
S. 49th & Lowell Ave.**



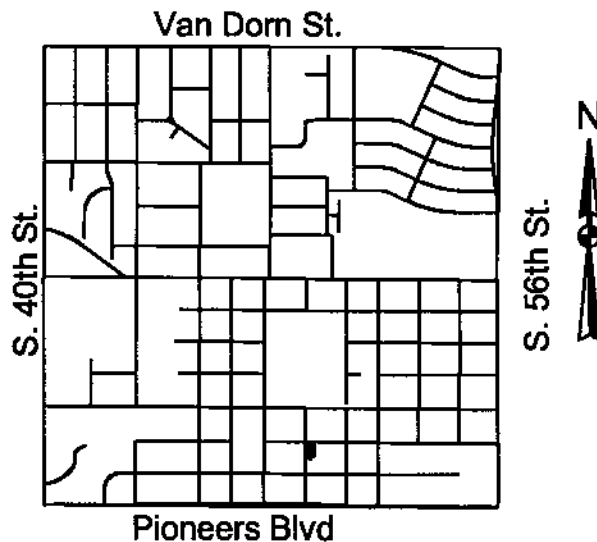
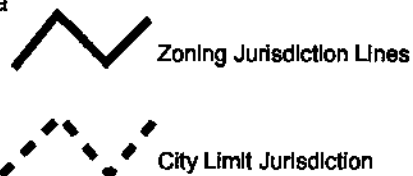


Change of Zone #3360 S. 49th & Lowell Ave.

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 5 T9N R7E



007

INTER-DEPARTMENT COMMUNICATION

TO	Planning Commission	DATE	December 5, 1990
DEPARTMENT		FROM	Rick Peo
ATTENTION		DEPARTMENT	Law
CARBONS TO		SUBJECT	Spot Zoning and Change of Zone 2604

QUESTION: Is Change of Zone 2604 from R-2 Residential District to O-2 Suburban Office District a "Spot Zone" that would be invalid under Nebraska law?

ANSWER: Yes.

DISCUSSION: In Nebraska the most quoted case in regard to spot zoning is Holmgren v. City of Lincoln, 199 Neb. 178, 256 N.W.2d 686 (1977), and for purposes of this discussion it would be of value to quote the relevant portions of the decision verbatim.

"In Weber v. City of Grand Island, supra, we said that spot zoning has been generally defined as the singling out of a small parcel of land for a use or uses classified differently from the surrounding area, primarily for the benefit of the owner of the property so zoned, to the detriment of the area and the other owners therein. As previously noted, that case involved the rezoning of a one-half block area in the midst of what was otherwise a residential area. We said: "The validity of spot zoning depends upon more than the size of the spot, and spot zoning as such is not necessarily invalid, but its validity depends upon the facts and circumstances appearing in each particular case." Hagman, op. cit., § 93, p. 169, analyzes spot zoning in the following fashion: "Spot zoning is invalid where some or all of the following factors are present:

"1. a small parcel of land is singled out for special and privileged treatment:

"2. the singling out is not in the public interest but only for the benefit of the landowner;

"3. the action is not in accord with a comprehensive plan.

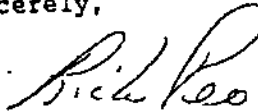
"The list is not meant to suggest that the three tests are mutually exclusive. If spot zoning is invalid, usually all three elements are present, or, said another way, the three statements may merely be nuances of one another."

With respect to Change of Zone 2604 all three of the above-quoted factors are present. First, a small parcel of land is being singled out for special and privileged treatment. In addition, this proposed change is a radical departure from the presently zoned uses. Second, the singling out of this parcel of land is for the benefit of a single landowner and does not provide similar relief to

December 5, 1990

abutting landowners similarly situated. Third, the proposed action is not in accord with the comprehensive plan. Therefore, it is apparent that the proposed change of zone is an impermissible spot zone.

Sincerely,



Ernest R. Peo III
Assistant City Attorney

ERP/bak

M e m o r a n d u m

MAR 12 2002

To: Jason Reynolds, Planning
From: ~~D~~ Dennis Bartels, Engineering Services
Subject: Change of Zone 3360, 49th and Lowell
Date: March 12, 2002
cc: Roger Figard
Randy Hoskins

Engineering Services has reviewed the request to change the zone at 4903 Lowell from R-⁴~~6~~ to O-2 and has the following comments:

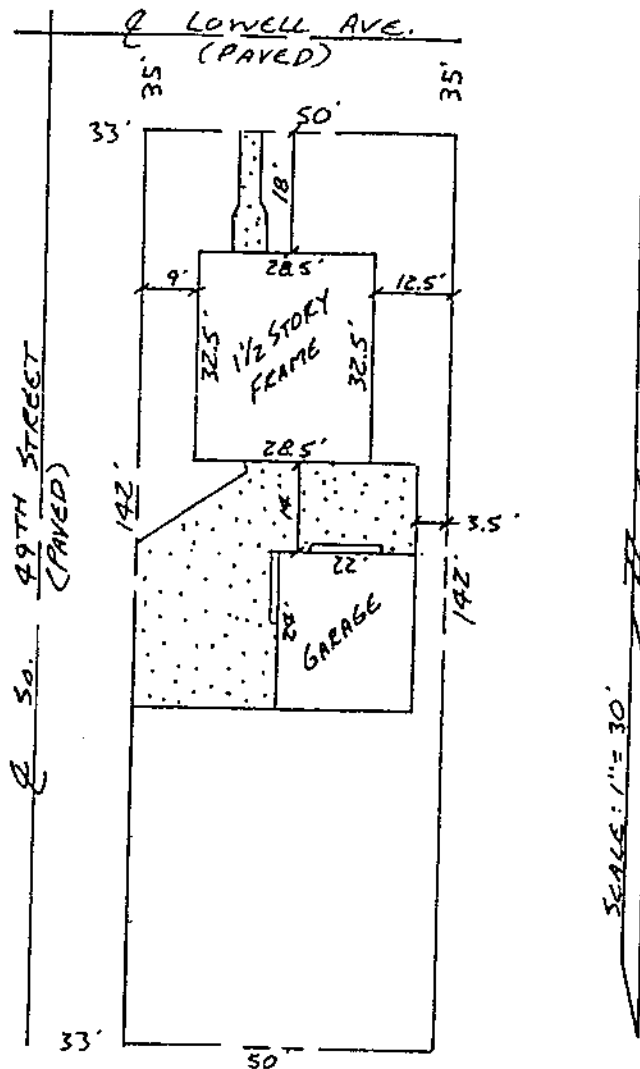
1. The lot requested for re-zoning does not abut any other O-2 lots.
2. Nothing is submitted to show that the existing house and garage and whether it meets requirements for an O-2 development.

PROPERTY IMPROVEMENT LOCATION PLAT

490.3 LOWELL AVE.

NTC 89-27840

VISTAR



NOTE: Subject property apparently falls within the confines of Zone "C" as determined by the FEMA-FIA Flood Rate Map community 35273 panel 0037C, revised 3/18/86

LEGAL DESCRIPTION: Lot 8, Block 41, College View, Lincoln, Lancaster County,

Nebraska

SURVEYOR'S CERTIFICATE

To the Lienholders and/or the owners of the premises inspected, and to

Mr. Herbert E. Reese Jr. and Nebraska Title Company

The undersigned does hereby certify that the inspection made this day on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements, or rights-of-way in evidence or known to me, except as shown hereon, and that said property has access to and from a dedicated roadway. The foregoing is shown with an accuracy necessary to satisfy the needs of a lender or insurer. This plat is not a boundary survey and is not to be used for any purpose whatsoever other than those specifically stated above.

Jesse W. Winger

Professional Surveyors, Inc.

315 SO. 9TH - SUITE 10

JESSE W. WININGER I.S.

PROJECT NO.

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DATE OF CERTIFICATE

9/28/89

REVISED

